

# Senate File 169

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1 1 SENATE FILE 169  
 1 2  
 1 3 AN ACT  
 1 4 RELATING TO THE REGULATION OF SUBSTANCES WHICH ARE PRECURSORS  
 1 5 TO AMPHETAMINE AND METHAMPHETAMINE AND PROVIDING A PENALTY  
 1 6 AND EFFECTIVE DATES.  
 1 7  
 1 8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
 1 9  
 1 10 Section 1. Section 124.212, subsection 4, Code 2005, is  
 1 11 amended by striking the subsection and inserting in lieu  
 1 12 thereof the following:  
 1 13 4. PRECURSORS TO AMPHETAMINE AND METHAMPHETAMINE. Unless  
 1 14 specifically excepted in paragraph "d" or "e" or listed in  
 1 15 another schedule, any material, compound, mixture, or  
 1 16 preparation which contains any quantity of the following  
 1 17 precursors to amphetamine or methamphetamine, including their  
 1 18 salts, optical isomers, and salts of their optical isomers:  
 1 19 a. Ephedrine.  
 1 20 b. Phenylpropanolamine.  
 1 21 c. Pseudoephedrine. A person shall not purchase more than  
 1 22 seven thousand five hundred milligrams of pseudoephedrine,  
 1 23 either separately or collectively, within a thirty=day period  
 1 24 from a pharmacy, unless the person has a prescription for a  
 1 25 pseudoephedrine product in excess of that quantity.  
 1 26 d. Any product that contains three hundred sixty  
 1 27 milligrams or less of pseudoephedrine, its salts, optical  
 1 28 isomers, and salts of its optical isomers, which is in liquid,  
 1 29 liquid capsule, or liquid=filled gel capsule form, is excepted  
 1 30 from this schedule and may be warehoused, distributed, and  
 1 31 sold over the counter pursuant to section 126.23A.  
 1 32 e. A pseudoephedrine product warehoused by a distributor  
 1 33 located in this state which is warehoused for export to a  
 1 34 retailer outside this state is excepted from this schedule. A  
 1 35 distributor warehousing and exporting a pseudoephedrine  
 2 1 product shall register with the board and comply with any  
 2 2 rules adopted by the board and relating to the diversion of  
 2 3 pseudoephedrine products from legitimate commerce.  
 2 4 Sec. 2. NEW SECTION. 124.213 PHARMACY PSEUDOEPHEDRINE  
 2 5 SALE RESTRICTION == PENALTY.  
 2 6 A person who purchases more than seven thousand five  
 2 7 hundred milligrams of pseudoephedrine from a pharmacy in  
 2 8 violation of section 124.212 or a retailer in violation of  
 2 9 section 126.23A, either separately or collectively, within a  
 2 10 thirty=day period commits a serious misdemeanor.  
 2 11 Sec. 3. Section 126.23A, Code 2005, is amended by striking  
 2 12 the section and inserting in lieu thereof the following:  
 2 13 126.23A PSEUDOEPHEDRINE RETAIL RESTRICTIONS.  
 2 14 1. a. A retailer or an employee of a retailer shall not  
 2 15 do any of the following:  
 2 16 (1) Sell a product that contains more than three hundred  
 2 17 sixty milligrams of pseudoephedrine in violation of section  
 2 18 124.212, subsection 4.  
 2 19 (2) Knowingly sell more than one package of a product  
 2 20 containing pseudoephedrine to a person in a twenty=four=hour

2 21 period.

2 22 (3) Sell a package of a pseudoephedrine product that can  
2 23 be further broken down or subdivided into two or more separate  
2 24 and distinct packages or offer promotions where a  
2 25 pseudoephedrine product is given away for free as part of any  
2 26 purchase transaction.

2 27 b. A retailer or an employee of a retailer shall do the  
2 28 following:

2 29 (1) Provide for the sale of a pseudoephedrine product in a  
2 30 locked cabinet or behind a sales counter where the public is  
2 31 unable to reach the product and where the public is not  
2 32 permitted.

2 33 (2) Require a purchaser to present a government-issued  
2 34 photo identification card identifying the purchaser prior to  
2 35 purchasing a pseudoephedrine product.

3 1 (3) Require the purchaser to legibly sign a logbook and to  
3 2 also require the purchaser to print the purchaser's name and  
3 3 address in the logbook.

3 4 (4) Determine the signature in the logbook corresponds  
3 5 with the name on the government-issued photo identification  
3 6 card.

3 7 (5) Keep the logbook twelve months from the date of the  
3 8 last entry.

3 9 (6) Provide notification in a clear and conspicuous manner  
3 10 in a location where a pseudoephedrine product is offered for  
3 11 sale stating the following:

3 12 Iowa law prohibits the over-the-counter purchase of more  
3 13 than one package of a product containing pseudoephedrine in a  
3 14 twenty-four-hour period or of more than seven thousand five  
3 15 hundred milligrams of pseudoephedrine within a thirty-day  
3 16 period. If you purchase a product containing pseudoephedrine,  
3 17 you are required to sign a logbook which may be accessible to  
3 18 law enforcement officers.

3 19 2. A purchaser shall not do any of the following:

3 20 a. Purchase more than one package of a pseudoephedrine  
3 21 product within a twenty-four-hour period from a retailer.

3 22 b. Purchase more than seven thousand five hundred  
3 23 milligrams of pseudoephedrine from a retailer, either  
3 24 separately or collectively, within a thirty-day period.

3 25 3. A purchaser shall legibly sign the logbook and also  
3 26 print the purchaser's name and address in the logbook.

3 27 4. Enforcement of this section shall be implemented  
3 28 uniformly throughout the state. A political subdivision of  
3 29 the state shall not adopt an ordinance regulating the display  
3 30 or sale of products containing pseudoephedrine. An ordinance  
3 31 adopted in violation of this section is void and unenforceable  
3 32 and any enforcement activity of an ordinance in violation of  
3 33 this section is void.

3 34 5. The logbook may be kept in an electronic format upon  
3 35 approval by the department of public safety.

4 1 6. A pharmacy that sells a product that contains three  
4 2 hundred sixty milligrams or less of pseudoephedrine on a  
4 3 retail basis shall comply with the provisions of this section  
4 4 with respect to the sale of such product. However, a pharmacy  
4 5 is exempted from the provisions of this section when selling a  
4 6 pseudoephedrine product pursuant to section 124.212.

4 7 7. A retailer or an employee of a retailer that reports to  
4 8 any law enforcement agency any alleged criminal activity  
4 9 related to the purchase or sale of pseudoephedrine or who  
4 10 refuses to sell a pseudoephedrine product to a person is

4 11 immune from civil liability for that conduct, except in cases  
4 12 of willful misconduct.

4 13 8. If a retailer or an employee of a retailer violates any  
4 14 provision of this section, a city or county may assess a civil  
4 15 penalty against the retailer upon hearing and notice as  
4 16 provided in section 126.23B.

4 17 9. An employee of a retailer who commits a violation of  
4 18 subsection 1 or a purchaser who commits a violation of  
4 19 subsection 2 commits a simple misdemeanor punishable by a  
4 20 scheduled fine under section 805.8C, subsection 6.

4 21 10. As used in this section, "retailer" means a person or  
4 22 business entity engaged in this state in the business of  
4 23 selling products on a retail basis. An "employee of a  
4 24 retailer" means any employee, contract employee, or agent of  
4 25 the retailer.

4 26 Sec. 4. NEW SECTION. 126.23B CIVIL PENALTY.

4 27 1. A city or a county may enforce section 126.23A, after  
4 28 giving the retailer an opportunity to be heard upon ten days'  
4 29 written notice by restricted certified mail stating the  
4 30 alleged violation and the time and place at which the retailer  
4 31 may appear and be heard.

4 32 2. For a violation of section 126.23A by the retailer or  
4 33 an employee of the retailer a civil penalty shall be assessed  
4 34 against the retailer as follows:

4 35 a. For a first violation, the retailer shall be assessed a  
5 1 civil penalty in the amount of three hundred dollars.

5 2 b. For a second violation within a period of two years,  
5 3 the retailer shall be assessed a civil penalty in the amount  
5 4 of one thousand five hundred dollars.

5 5 c. For a third violation within a period of three years,  
5 6 the retailer shall be assessed a civil penalty in the amount  
5 7 of two thousand dollars. The retailer may also be prohibited  
5 8 from selling pseudoephedrine for up to three years from the  
5 9 date of assessment of the civil penalty.

5 10 d. For a fourth or subsequent violation within a period of  
5 11 three years, the retailer shall be assessed a civil penalty in  
5 12 the amount of three thousand dollars. On a fourth or  
5 13 subsequent violation, the retailer shall be prohibited from  
5 14 selling pseudoephedrine products for three years from the date  
5 15 of the assessment of the civil penalty.

5 16 3. The city or county that takes legal action against a  
5 17 retailer under this section shall report the assessment of a  
5 18 civil penalty to the department of public safety within thirty  
5 19 days of the penalty being assessed.

5 20 4. The civil penalty shall be collected by the clerk of  
5 21 the district court and shall be distributed as provided in  
5 22 section 602.8105, subsection 4.

5 23 Sec. 5. Section 602.8105, subsection 4, Code 2005, is  
5 24 amended to read as follows:

5 25 4. The clerk of the district court shall collect a civil  
5 26 penalty assessed against a retailer pursuant to section  
5 27 ~~126.23A~~ 126.23B. Any moneys collected from the civil penalty  
5 28 shall be distributed to the ~~state or a political subdivision~~  
5 29 ~~of the state as provided in city or county that brought the~~  
5 30 ~~enforcement action for a violation of section 126.23A,~~  
5 31 ~~subsection 7.~~

5 32 Sec. 6. Section 714.7C, Code 2005, is amended to read as  
5 33 follows:

5 34 714.7C THEFT OF PSEUDOEPHEDRINE == ENHANCEMENT.

5 35 Notwithstanding section 714.2, subsection 5, a person who

6 1 commits a simple misdemeanor theft of ~~more than two packages a~~  
 6 2 ~~product containing any of the following pseudoephedrine from a~~  
 6 3 ~~retailer as defined in section 126.23A~~ commits a serious  
 6 4 misdemeanor+.

6 5 ~~1. Pseudoephedrine as the product's sole active~~  
 6 6 ~~ingredient.~~

6 7 ~~2. Pseudoephedrine in combination with other active~~  
 6 8 ~~ingredients.~~

6 9 ~~A simple misdemeanor theft of more than two packages~~  
 6 10 ~~containing pseudoephedrine as the products' sole active~~  
 6 11 ~~ingredient which are in liquid form does not constitute a~~  
 6 12 ~~serious misdemeanor under this section.~~

6 13 Sec. 7. Section 804.21, subsection 1, Code 2005, is  
 6 14 amended to read as follows:

6 15 1. A person arrested in obedience to a warrant shall be  
 6 16 taken without unnecessary delay before the nearest or most  
 6 17 accessible magistrate. The officer shall at the same time  
 6 18 deliver to the magistrate the warrant with the officer's  
 6 19 return endorsed on it and subscribed by the officer with the  
 6 20 officer's official title. However, this section, and sections  
 6 21 804.22 and 804.23, do not preclude the release of an arrested  
 6 22 person within the period of time the person would otherwise  
 6 23 remain incarcerated while waiting to be taken before a  
 6 24 magistrate if the release is pursuant to pretrial release  
 6 25 guidelines or a bond schedule promulgated by the judicial  
 6 26 council, unless the person is charged with manufacture,  
 6 27 delivery, possession with intent to deliver, or distribution  
 6 28 of methamphetamine. If, however, a person is released  
 6 29 pursuant to pretrial release guidelines, a magistrate must,  
 6 30 within twenty-four hours of the release, or as soon as  
 6 31 practicable on the next subsequent working day of the court,  
 6 32 either approve in writing of the release, or disapprove of the  
 6 33 release and issue a warrant for the person's arrest.

6 34 Sec. 8. Section 804.22, unnumbered paragraph 2, Code 2005,  
 6 35 is amended to read as follows:

7 1 This section and the rules of criminal procedure do not  
 7 2 affect the provisions of chapter 805 authorizing the release  
 7 3 of a person on citation or bail prior to initial appearance,  
 7 4 unless the person is charged with manufacture, delivery,  
 7 5 possession with intent to deliver, or distribution of  
 7 6 methamphetamine. The initial appearance of a person so  
 7 7 released shall be scheduled for a time not more than thirty  
 7 8 days after the date of release.

7 9 Sec. 9. Section 805.8C, subsection 6, Code 2005, is  
 7 10 amended by striking the subsection and inserting in lieu  
 7 11 thereof the following:

7 12 6. PSEUDOEPHEDRINE SALES VIOLATIONS. For violations of  
 7 13 section 126.23A, subsection 1, by an employee of a retailer,  
 7 14 or for violations of section 126.23A, subsection 2, by a  
 7 15 purchaser, the scheduled fine is as follows:

7 16 a. If the violation is a first offense, the scheduled fine  
 7 17 is one hundred dollars.

7 18 b. If the violation is a second offense, the scheduled  
 7 19 fine is two hundred fifty dollars.

7 20 c. If the violation is a third or subsequent offense, the  
 7 21 scheduled fine is five hundred dollars.

7 22 Sec. 10. Section 811.2, subsection 1, unnumbered paragraph  
 7 23 2, Code 2005, is amended to read as follows:

7 24 Any bailable defendant who is charged with unlawful  
 7 25 possession, manufacture, delivery, or distribution of a

7 26 controlled substance or other drug under chapter 124 and is  
 7 27 ordered released shall be required, as a condition of that  
 7 28 release, to submit to a substance abuse evaluation and follow  
 7 29 any recommendations proposed in the evaluation for appropriate  
 7 30 substance abuse treatment. However, if a bailable defendant  
 7 31 is charged with manufacture, delivery, possession with the  
 7 32 intent to deliver, or distribution of methamphetamine, its  
 7 33 salts, optical isomers, and salts of its optical isomers, the  
 7 34 defendant shall, in addition to a substance abuse evaluation,  
 7 35 remain under supervision and be required to undergo random  
 8 1 drug tests as a condition of release.

8 2 Sec. 11. Section 811.2, subsection 3, Code 2005, is  
 8 3 amended to read as follows:

8 4 3. RELEASE AT INITIAL APPEARANCE. This chapter does not  
 8 5 preclude the release of an arrested person as authorized by  
 8 6 section 804.21, unless the arrested person is charged with  
 8 7 manufacture, delivery, possession with the intent to deliver,  
 8 8 or distribution of methamphetamine.

8 9 Sec. 12. RETAILER COMPLIANCE. Be it deemed necessary for  
 8 10 public safety purposes, retailers shall begin to take steps to  
 8 11 come into compliance with the provisions of this Act as soon  
 8 12 as possible.

8 13 Sec. 13. DRUG POLICY COORDINATOR == REPORT. The drug  
 8 14 policy coordinator shall report, in a joint meeting, to the  
 8 15 committee on judiciary of the senate and the committee on  
 8 16 public safety of the house of representatives in January 2006  
 8 17 and in January 2007, the effects of this Act on  
 8 18 methamphetamine abuse and related criminal activity.

8 19 Sec. 14. EFFECTIVE DATES. This Act takes effect sixty  
 8 20 days from the date of enactment or July 1, 2005, whichever is  
 8 21 earlier. However, the portion of the section of this Act  
 8 22 amending section 124.212, subsection 4, which makes all  
 8 23 ephedrine products schedule V controlled substances, and the  
 8 24 sections of this Act amending sections 804.21, 804.22, and  
 8 25 811.2, take effect upon enactment.

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8 29 JEFFREY M. LAMBERTI  
 8 30 President of the Senate

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8 34 CHRISTOPHER C. RANTS  
 8 35 Speaker of the House

9 1

9 2 I hereby certify that this bill originated in the Senate and  
 9 3 is known as Senate File 169, Eighty-first General Assembly.

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9 7 MICHAEL E. MARSHALL  
 9 8 Secretary of the Senate

9 9 Approved \_\_\_\_\_, 2005

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9 12

9 13 THOMAS J. VILSACK

9 14 Governor